

March 4, 2014

VIA U.S. MAIL

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***Re: Farmington City's Request to Reissue or Prepare a
Supplemental Draft Environmental Impact Statement for the West
Davis Corridor, FHWA Project No. UT-EIS-13-02-D.***

Dear Ms. Kocher,

Farmington City submitted comments on September 6, 2013 on the Draft Environmental Impact Statement and Section 4(f) Determination dated April 2013 ("DEIS") for the West Davis Corridor ("WDC"). Several Federal agencies and many other entities and persons also submitted comments. It is clear from these comments the DEIS fails to follow and fulfill the requirements of NEPA. Under the current set of circumstances and pursuant to 40 CFR §1502.9 and 23 CFR 771.130, Farmington City believes FHWA is required to revisit the Project at the formative NEPA stages, undertake significant further review and then issue a revised or supplemental DEIS for public comment.

The existing document contains so many fundamental legal flaws, data collection errors and omissions that it fails to provide the requisite analysis required by operative law to meet the agency's obligations under NEPA and Section 4(f). Farmington City's public comments dated September 6, 2013, highlight in detail a number of these flaws. The most basic is that no objective "need" had been demonstrated for the WDC by 2040 with respect to I-15 within the limited study area, with the exception of an area near Kaysville and another near Sunset. In both of these areas, widening of I-15 appears to be the more logical and inexpensive solution. Also, improvement to certain East/West roads North of Farmington may be needed, but widening of those roads is a logical solution to meet those needs rather than constructing a new multi-lane, high speed, limited access highway next to the Great Salt Lake. Alternatives related to both of these "needs" require further review.

The first logical step in any valid NEPA process is to determine if a “need” exists and if it does, where the “need(s)” exist. The map at page IV-9 of the DEIS demonstrates there is no need for the WDC, even in 2040, in Farmington City, so there is no basis to burden Farmington City with this Project at either Glovers Lane or Shepard Lane. The geography of the Farmington City area is such that only limited land is available between the mountains of the Wasatch Front Range and the Great Salt Lake. That land is already occupied by several high volume, high speed roads. Both the geography and the lack of demonstrable need require that any version of the WDC that can be sustained by a viable need analysis begin north of Farmington City.

Also, selection of a “local” study area to address a “regional” traffic problem renders the entire Draft EIS’s analysis unlawful and untenable. The purpose of this Project is to find a solution to an alleged set of regional problems. By arbitrarily bisecting the Region with a North/South line at I-15 and then ending the Study Area where it was ended to the North, the required review of the entire regional need and review of all reasonable alternatives to meet those needs were impermissibly foreclosed. The traffic data in the Draft EIS supports this proposition. These arbitrary Study Area boundaries fundamentally altered the need portion of the DEIS and, thus, resulted in a failure to review all reasonable alternatives that may solve the articulated regional traffic problems.

In addition and as explained in Farmington City’s public comments and its subsequent letter dated February 21, 2014, the Section 4(f) analysis failed to designate Farmington City’s Conservation Easements as Section 4(f) properties in violation of binding FHWA guidance and other law. This flaw renders the entire Section 4(f) analysis void, as the currently preferred alignment for the WDC will eviscerate the 4(f) attributes and other resources protected by these Conservation Easements. It should also be noted that the review of the impacts of the WDC on these Conservation Easements and the resources they contain was impermissibly superficial under operative law, as was much of the review of potential impacts of the Project (direct, indirect and cumulative) and the review of the totality of impacts created by the Project, coupled with the connected actions. There was also a pronounced failure to fully discern and then study the mandated environmental issues and to then document the potential impacts to them.

A “shared solution” alternative has been proposed by concerned groups and individuals. FHWA and UDOT have not yet fully analyzed this alternative and that should have been accomplished in the DEIS to allow its

functional comparison with the alternatives in the DEIS, together with the reasonable alternatives suggested by Farmington City and others. Should this Shared Solution alternative prove viable and meet the Project purpose and need, it would broaden the range of alternatives and could provide an alternative with fewer impacts within the Region. The same is true of the other suggested alternatives and with a Study Area of the correct size, it is more than likely other reasonable alternatives will emerge. The failure to study all reasonable alternatives presents another fatal flaw in the DEIS due to the constricted Study Area, lack of a diligent search for alternatives and otherwise.

The Department of the Interior has expressed numerous concerns with the selection of the Preferred Alternative in the DEIS in its comments dated August 14, 2013. These comments raise many violations of law in the DEIS, including the fact that the Glovers Lane option would be significantly more damaging to Great Salt Lake Shoreland wetland and wildlife habitats than the Shepherd Lane option. Glovers Lane would result in the construction of a 4-lane plus freeway adjacent to the lake shore that would permanently and irreparably degrade the wildlife values of the shoreland habitats, including those of the Farmington Bay Waterfowl Management Area ("FBWMA") and habitats to the north of the FBWMA and west of the alignment. The Department of the Interior concluded UDOT should reconsider the selection of the Glovers Lane option and encouraged UDOT and the FHWA to select the Shepherd Lane option. Farmington City concurs that the Glovers Lane option should have never been selected due to Section 4(f) and other considerations. That said, the fact that the DEIS itself demonstrates that the need for the entire project arises North of Farmington City is especially important. Should a proper need analysis and alternatives review reveal the Shepherd Lane alternative unnecessary, then that would be Farmington City's preference. However, an alternative that originates North of Farmington City must be studied in any event.

Many other agencies, groups and individuals submitted similar comments on the DEIS pointing out irreparable flaws in the document. The Environmental Protection Agency, the U.S. Army Corps of Engineers, the Utah Reclamation, Mitigation and Conservation Commission, the Utah Department of Environmental Quality and the Utah Transit Authority have voiced concerns or outright objections to UDOT's preferred route for the WDC. Most of these comments relate to the damage the road will cause to nearby wetlands and wildlife, which are core values and very important attributes of the land located within Farmington City. Of course, the Conservation Easements were intentionally acquired and have been

maintained by Farmington City to protect these unique, natural areas within its borders in perpetuity.

To address these issues, entire sections of the DEIS must be reshaped, reoriented and restudied, a new Study Area must be selected and new alternatives ascertained and reviewed. These problems cannot be addressed in a Final EIS. As you know, a Draft EIS is for all intents and purposes an interim decisional document for a proposed project that describes the anticipated agency action and allows for public comment on what is otherwise a final proposal. The Final EIS is intended to address any public comments submitted on the Draft EIS that simply require clarification or other minor responses such as corrections to data, or explanation that further response is not warranted. When significant portions of the DEIS are in error, required to be rewritten, or issues studied or restudied to comply with operative law, a supplemental or reissued Draft EIS is required. This allows the public and other agencies the opportunity to review and comment on the actual anticipated agency action with reliance on updated analysis and data that pertain to the new issues raised in the comments. With problems as fundamental as the Need for the Project, the size of the Study Area, the failure to ascertain, much less review all reasonable alternatives, the failure to discern, review and articulate impacts on all of the mandated NEPA environmental issues, and the 4(f) issues all reveal the need for a re-issued or supplemental DEIS. FHWA regulations require a supplemental EIS in these circumstances:

- (a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:
 - (1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or
 - (2) **New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.**

23 CFR §771.129 (emphasis added).

Farmington City realizes the preparation of a revised or Supplemental DEIS will entail additional costs and delay, but it believes that course of

Arlene Kocher
Federal Highway Administration
March 4, 2014
Page 5 of 5

action is preferable to letting the present DEIS stand as the principal analysis of the impacts that will result from this Project. The DEIS simply does not perform that function, or adequately address the other issues mentioned herein. FHWA and UDOT have already announced they are delaying the decision-making process on this Project to address the concerns raised in the public comments. As it now stands, the DEIS proposes a Project that cannot withstand judicial review and will be required to be restudied at the end of what appears to be inevitable legal challenges to the document. From a practical standpoint, the DEIS simply did not do the job the public expects and to which it is entitled under the law. Reissuing the Draft EIS in accordance with the comments submitted will save the FHWA the costs and delay associated with defending a legally infirm document and save taxpayer money in the long run. It will also allow a better Project to move forward, taking into account the valuable insight from, as well as further cooperation with local, state and federal agencies that have objected to the Project as currently proposed.

Sincerely,
RAY QUINNEY & NEBEKER P.C.


Jeffrey W. Appel, Esq.

cc: David Millheim, City Manager, Farmington City (via e-mail)
Carlos Bracerias, Director, UDOT (via U.S. Mail)